

1 right answer to the question. If Mr. Harrelson is on
2 the stand, if he's got the documents and there was an
3 interaction between them, he can ask Mr. Harrelson.
4 And I'm not conceding the need for a rebuttal case,
5 but if after that --

6 JUDGE SIPPEL: Wait a minute. This isn't
7 rebuttal, this is part of the --

8 MR. SEIVER: I know, I'm saying but after
9 that examination, if Mr. Campbell believes that he's
10 still got something that he wasn't able to establish
11 with Mr. Harrelson with those documents, he could try
12 to persuade Your Honor then that, well, I can only do
13 this --

14 JUDGE SIPPEL: All right. All right. All
15 right. Don't go too far with it.

16 What about you? Are you going to ask
17 Harrelson about these documents?

18 MR. CAMPBELL: I am, Your Honor, but
19 there are two sides to the conversation.

20 JUDGE SIPPEL: I understand. No, no, no,
21 but Mr. Seiver --

22 MR. CAMPBELL: I absolutely plan to ask

1 him.

2 JUDGE SIPPEL: You can ask Harrelson about
3 it, right, so we're going to find out by -- the
4 suspense is going to be lifted either today or
5 tomorrow.

6 MR. CAMPBELL: I don't believe it will.

7 JUDGE SIPPEL: You're going to ask
8 different documents or --

9 MR. CAMPBELL: No, sir. The difference
10 is that there are communications between Mr. Harrelson
11 and the witness. I can get one side of the
12 communication and one description of the document. I
13 think it's going to be very inconsistent with Mr.
14 O'Ceillaigh's description of the document.

15 JUDGE SIPPEL: You think that based on
16 what he testified to in his deposition?

17 MR. CAMPBELL: Based on the document,
18 what it tells us on the face of the document that is
19 inconsistent with Mr. Harrelson's testimony in this
20 case. And again, Your Honor, I know we're trying to
21 explore these issues and think out loud, but I can't
22 be pushed to the point where I tip my hand.

1 JUDGE SIPPEL: I'm just simply saying if
2 it is so obvious from the document, then why do we
3 need -- why can't you work between the document and
4 Harrelson?

5 MR. CAMPBELL: Mr. Harrelson is a
6 professional witness, Your Honor. I'm sure that he
7 will come up with a way to explain it. I want an
8 explanation from Mr. O'Ceillaigh.

9 JUDGE SIPPEL: Well, we're not going to
10 make that decision today. I'll reserve on it again
11 until I hear from Mr. Harrelson. But you're giving me
12 your assurance that you are going to examine Mr.
13 Harrelson with these same documents?

14 MR. CAMPBELL: Yes, Your Honor.
15 Absolutely I intend to do that.

16 JUDGE SIPPEL: Then I will wait until we
17 finish with Mr. Harrelson and you can make your
18 proffer again. Mr. O'Ceillaigh is a complainant's
19 witness, is that correct? Who is he with? With Cox,
20 or who is he with?

21 MR. CAMPBELL: With Cox, Your Honor.

22 JUDGE SIPPEL: All right. Just put him on

1 notice to stand by. Has he left the country?

2 MR. SEIVER: No, I'll notify him, Your
3 Honor.

4 JUDGE SIPPEL: You don't have to take his
5 passport, but tell him to stick around just in case.

6 (Laughter.)

7 MR. SEIVER: All right.

8 JUDGE SIPPEL: Okay?

9 MR. SEIVER: Yes, I will do that.

10 JUDGE SIPPEL: Monday or Tuesday of next
11 week would be it.

12 MR. SEIVER: But will we be able to know
13 by Thursday?

14 JUDGE SIPPEL: Tomorrow is Thursday.

15 MR. SEIVER: Right, tomorrow --

16 JUDGE SIPPEL: Well, let me repeat what I
17 said. Unless we get finished with Mr. Harrelson -- if
18 Mr. Harrelson goes over until Monday, then obviously
19 I'm not going to know until the end of -- well, maybe
20 we will. I mean maybe there will be a point, even if
21 he's not finished, that we can raise this at the end
22 of the day tomorrow and come up with some kind of a

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1 resolution.

2 I just know I'm not convinced yet. I'm
3 not trying to criticize what you're doing or how
4 you're doing it. I'm simply not convinced that this
5 is the type of case that needs all, that's all. I'm
6 just not convinced on that yet. So let's see where we
7 go.

8 MR. CAMPBELL: With that, we will reserve
9 on closing our case in chief until that issue is
10 resolved then, Your Honor.

11 JUDGE SIPPEL: That's fine.

12 MR. CAMPBELL: Okay.

13 JUDGE SIPPEL: That's fine. Now is there
14 anything else that you want to talk about?

15 MR. CAMPBELL: Just with respect to
16 scheduling the issue of a possible rebuttal case. I
17 know we can't address that until all the evidence is
18 in there so that we can accurately analyze that. The
19 way it's looking, Ms. Kravtin will consume the
20 afternoon and Mr. Harrelson will consume tomorrow, and
21 then it looks like a possible Monday return for either
22 Mr. O'Ceillaigh, one rebuttal witness, perhaps, and

1 some closing remarks, and it looks like we would
2 conclude on Monday.

3 If that looks like the tentative schedule,
4 we just wanted to get our ducks in a row with respect
5 to travel, et cetera.

6 JUDGE SIPPEL: You said two things there.
7 You said Mr. O'Ceillaigh and rebuttal witness?

8 MR. CAMPBELL: Perhaps one rebuttal
9 witness that we will proffer to the Court after we
10 finish with Ms. Kravtin and Mr. Harrelson, if
11 necessary.

12 JUDGE SIPPEL: And that would be over and
13 above O'Ceillaigh?

14 MR. CAMPBELL: Yes, sir.

15 JUDGE SIPPEL: And is this somebody that
16 we know, or is he or she a mystery witness?

17 MR. CAMPBELL: It may be an expert to
18 rebut some of Mr. Harrelson's testimony.

19 JUDGE SIPPEL: Okay.

20 MR. CAMPBELL: It will be very, very
21 limited, though. It would be a half a day kind of
22 rebuttal case with Mr. O'Ceillaigh and this witness.

1 JUDGE SIPPEL: This would be a witness
2 that Mr. Seiver hasn't met and hasn't had an
3 opportunity to talk to or depose or do anything?

4 MR. CAMPBELL: That would be correct. It
5 would be a rebuttal witness.

6 JUDGE SIPPEL: He'd be a walk-on?

7 MR. CAMPBELL: He'd be a rebuttal
8 witness, Your Honor.

9 JUDGE SIPPEL: Now how do you know that --
10 why do you think -- why do you think I would be
11 convinced of that kind of a procedure?

12 MR. CAMPBELL: We have the burden of
13 proof in this case.

14 JUDGE SIPPEL: That's correct.

15 MR. CAMPBELL: And when you have the
16 burden of proof, typically you have the opportunity to
17 open the evidentiary presentation and to close the
18 evidentiary presentation. We submitted in this case
19 simultaneous written cases in chief. They proffered
20 expert testimony --

21 JUDGE SIPPEL: Well, there was a stepping
22 on that. You went first and they went second on --

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1 MR. CAMPBELL: What compounds our problem
2 is that we tendered our testimony before ever seeing
3 their expert's report. They come in with an expert,
4 he dumps loads of technical data on us. We do not --
5 haven't tendered an expert in our case in chief. So
6 we're sitting there with all this expert testimony.
7 I'm going to cross-examine him, but there may be areas
8 that we need to rebut with a technical expert in order
9 to present our case fairly and satisfy our burden of
10 proof to open and close the evidence.

11 JUDGE SIPPEL: And you want to put that
12 technical expert on, Witness X, without Mr. Seiver
13 ever being introduced to him until he walks in the
14 courtroom?

15 MR. CAMPBELL: It's a rebuttal witness,
16 Your Honor. It happens all the time.

17 JUDGE SIPPEL: Well, you know, it might in
18 an intersection accident, but I just don't see that's
19 going to help me. I mean it might help you, but, you
20 know, I'm here representing the commission. The
21 commission is supposed to have a record that makes
22 some kind of sense and is not designed to be one-

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1 sided.

2 So if you set it up this way, I don't
3 think you're going to get your witness to walk in here
4 without having Mr. Seiver having an opportunity to
5 know who he is and have a chance to talk to him.

6 MR. CAMPBELL: We would be happy to
7 disclose the identity of the potential rebuttal
8 witness, and I guess to afford him an opportunity to
9 take a limited deposition, and that would cure the
10 potential harm.

11 But, you know, his expert has raised some
12 issues that we think it would be helpful to your as
13 the trier of fact to have a countervailing expert
14 opinion to address those issues.

15 JUDGE SIPPEL: Believe me, I want to give
16 you all the time you want, Mr. Seiver. I want to be
17 sure that I've got my own issues out there on the
18 table first.

19 I suspect what I'm seeing being done here,
20 and I'm not happy with it, but let's again just take
21 this one step at a time.

22 If you -- you know what Mr. Harrelson is

1 going to testify to. You know the documentary
2 exhibits that are going to come in that he's going to
3 testify to. You have taken his deposition, so you
4 know what Mr. Harrelson is all about. You have known
5 that coming into this case, coming into the hearing,
6 anyway, and yet now you want to come after him with a
7 rebuttal witness instead of putting this evidence on
8 directly yourself.

9 MR. CAMPBELL: Your Honor, we didn't have
10 the chance to put that evidence on ourselves. As you
11 recognized, it was a stairstep presentation. Their
12 evidence came in in a different manner -- or I recall
13 it being simultaneous. Do I have the dates wrong?

14 MR. LANGLEY: It was simultaneous.

15 MR. CAMPBELL: I thought it was
16 simultaneous. So we didn't have --

17 JUDGE SIPPEL: Weren't they stepped? I
18 was away, I was in San Francisco. You came in on the
19 18th and somebody else came in later, or was it --

20 MR. SEIVER: That was the trial brief,
21 Your Honor.

22 JUDGE SIPPEL: That's what I'm talking

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1 about.

2 MR. SEIVER: The testimony did come in at
3 the same time, and the summary reports came in at the
4 same time. But just to put it in perspective, when
5 Your Honor originally --

6 JUDGE SIPPEL: The trial briefs is what I
7 was referring to.

8 MR. CAMPBELL: Correct.

9 MR. SEIVER: When Your Honor started this
10 case, there was only going to be one expert per side,
11 and I specifically petitioned the Court for the
12 opportunity for two. So I explained, probably a year
13 and a half ago, that we needed to have -- or over a
14 year ago, an economics expert and an engineering
15 expert. And we engaged -- and they can go through it
16 -- when those experts were engaged, probably over a
17 year ago. And we have been working with them. They
18 would not disclose until we did the expert
19 disclosures. And we did the summary reports and the
20 CV. So they knew, not when they got the testimony,
21 not when they got the trial brief, but when Your Honor
22 said exchange your experts. And we did. And for

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1 whatever reason, Gulf decided not to designate a
2 technical or engineering expert.

3 So this rebuttal effort on their part
4 sounds like a bit of a gaming of the system of don't
5 designate them early, you know, do a report, do
6 testimony, do depositions, and then come to the
7 hearing, instead to come in with, you know, a day's
8 notice or two days' notice and just have them testify
9 without that opportunity.

10 They had the opportunity to have an
11 engineering expert a year ago, just like we did. And
12 Mr. Spain didn't even begin the case until January.

13 JUDGE SIPPEL: Mr. Spain has no bearing on
14 this.

15 MR. SEIVER: No, I was going to say --

16 JUDGE SIPPEL: This is clarity enough.

17 MR. CAMPBELL: Your Honor, as I said, we
18 exchanged the cases simultaneously.

19 JUDGE SIPPEL: Right.

20 MR. CAMPBELL: We didn't get an
21 opportunity to see their experts' report before we
22 tendered our evidence in this case. We have the

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1 burden of proof.

2 JUDGE SIPPEL: But --

3 MR. SEIVER: They had this testimony, Your
4 Honor. They had his deposition, too.

5 MR. CAMPBELL: Correct, we did have
6 deposition testimony. The point of all this is, is
7 that we have cross-examination of Mr. Harrelson. I
8 have two or three questions of Mr. Harrelson. If he
9 answers those questions in the right way, I don't need
10 a rebuttal witness. I don't know that as I stand
11 here. I couldn't know that three weeks ago or four
12 weeks ago. And so the fact that it's a rebuttal
13 witness, that's the nature of a rebuttal witness, it
14 is to address something new or different in the case,
15 something that you didn't have an opportunity to
16 address. So that's what it will be about. And that's
17 why I leave it open as a possible witness.

18 And I would add that possibility has been
19 noted by Gulf Power consistently for weeks, perhaps
20 months, and we have not heard any objection from the
21 other side. When we submitted our exhibit list, we
22 noted that we may have rebuttal witnesses and rebuttal

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1 documents. When we submitted our notice of intent to
2 cross-examine, we raised the issue again. It was
3 raised in the trial brief, I think. If I'm missing
4 something else, Mr. Estes, let me know. But we have
5 consistently said we have to deal with this issue of
6 a potential rebuttal case.

7 Now as I stand here right now today, I
8 think that possibility may be remote, but I have to
9 know that before we get too far down the road with the
10 schedule and try to close the case.

11 MR. SEIVER: Your Honor, they did bring up
12 rebuttal a long time ago and I said I don't see any
13 procedure for rebuttal. We agreed on the procedural
14 order of the way we were going to disclose experts and
15 submit testimony. That was an agreed order that was
16 done before Your Honor, and so it's kind of surprising
17 now to hear this last-minute stuff.

18 JUDGE SIPPEL: There's always rebuttal --
19 I mean not that there's always rebuttal in cases, but
20 the question of rebuttal is always an open question
21 until the record is closed. That doesn't necessarily
22 mean that you walk in and get rebuttal.

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1 So I mean I don't think that the fact that
2 you were disclosing the fact that you were considering
3 rebuttal is like saying that, you know, you were
4 considering a closing argument and then you want to
5 argue for a closing argument. It's part of the mix.
6 It's part of the mix. But you still have to show that
7 you need it or that -- and I feel that there's a need
8 for it for the case.

9 I'm just a little bit -- I'm not happy
10 with the development. And I must say I'm not going to
11 be able to do anything, you know, I'm not going to do
12 anything right away.

13 MR. CAMPBELL: Why don't we address it at
14 the close of Mr. Harrelson's testimony?

15 JUDGE SIPPEL: Well, we'll come back to
16 it. We sure will. But I want to put you on notice
17 that you've got all these people lined up and I don't
18 know who they are or where they are or how they're
19 flying in from, you know, wherever. But, you know,
20 you're going to move them around the world on your own
21 dime and at your own risk. I'm not going to get
22 pushed into making a decision on this simply because

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1 people are going to be inconvenienced. Because I
2 think that I have been terribly inconvenienced by
3 putting me in this position.

4 This is not that kind of a case. That's
5 my opinion. That's my view on it. I'm not going to
6 tell you how to try your case; I'm simply saying that
7 the nature of the case, the nature of the evidence --
8 and this is definitely a -- you know, this is a
9 regulatory type of issue that has to be decided --
10 because of what the Eleventh Circuit wrote, it needs
11 a fact record to do it.

12 MR. CAMPBELL: I hope it's not
13 necessarily.

14 JUDGE SIPPEL: Beg pardon?

15 MR. CAMPBELL: I hope it's not necessary,
16 Your Honor. It may not be.

17 JUDGE SIPPEL: Well, you sure got my
18 dander up. I don't know. Let's find out. And I
19 don't mean that personally; I mean --

20 MR. CAMPBELL: I understand.

21 JUDGE SIPPEL: What I'm trying to do is
22 run a railroad here in terms of keeping this case on

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1 track, and this is a development that's interfering
2 with my job in getting that done. It is not a
3 reflection on you, your case, or how you want to
4 proceed. Who knows, I may end up, you know -- you
5 ask, sometimes you get, sometimes you don't get.

6 It's 10 to 12. At least we've got the
7 documents under control now.

8 MR. CAMPBELL: Correct.

9 JUDGE SIPPEL: And so now it's just a
10 question of me making sure the court reporter is on
11 track with that.

12 We have to decide about O'Ceillaigh, we
13 have to decide about a rebuttal expert. That's not
14 going to be decided until we get finished with Mr.
15 Harrelson tomorrow. And if I'm not prepared to rule
16 on it tomorrow, it may have to wait until Monday. It
17 may be that we'll have to set testimony up a week and
18 a half from now for scheduling purposes.

19 I'm not going to push people to do things
20 that they are not ready to do, and I'm not going to
21 put myself in a position where I'm not prepared to
22 handle whatever you're throwing at me.

1 So we're just going to have to take this
2 with some deliberation, that's all.

3 Ten to 12 up there. Why don't we come
4 back at -- say can we come back at -- if we start at
5 1:20?

6 MR. CAMPBELL: That will be fine, Your
7 Honor.

8 JUDGE SIPPEL: With the cross-examination.
9 I mean you're tendering him for cross.

10 MR. CAMPBELL: That would be fine.

11 JUDGE SIPPEL: I will tell you very
12 briefly before we go off the record, on this. I got
13 your motion, Mr. Campbell, Mr. Langley, and Mr. Estes,
14 and what I am going -- first of all, I don't see --
15 you're not going to get that relief now. This is your
16 motion to strike, basically to strike the testimony of
17 complainants' expert, and I've -- you know, certainly
18 I have read your motion very carefully, and the TC --
19 what is it, TC something case that you cited, and I
20 don't see anything in that case.

21 First of all, the judge in that case was
22 Judge Treece. He admitted practically most of

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1 everything that the witness had to offer, anyway. I'm
2 looking here for a copy of the -- here it is. The
3 testimony of Patricia Kravtin.

4 As long as she is being asked, everybody -
5 - all the experts in here are being asked to somehow
6 or other apply the standards of the Eleventh Circuit
7 to the evidence in this case. You can't get away from
8 that. What she has to do is she can't be giving --
9 she just can't be spouting off legal advice. She has
10 to be -- it has to be crafted between the decision
11 language and the evidence in the case and her analysis
12 as an expert.

13 And if she does that, then she's -- you
14 know, what she's going to be offer is going to be
15 received and considered.

16 I can't make that -- I just can't make
17 that kind of a determination on a line-by-line basis
18 in the middle of this hearing, but let me make this
19 one distinction, which to me is a very major
20 distinction, and that is Judge Treece referred to this
21 in several places in his decision that he was
22 concerned about the witness, the expert witness,

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1 giving the jury instructions and that would interfere
2 with the instructions of the trial judge. And I don't
3 think we have that problem here.

4 In fact, I know we don't have that problem
5 here. I don't have to protect a jury from whatever
6 the machinations of Ms. Kravtin might be. So I think
7 I can handle it myself. And also -- that's point No.
8 1.

9 And point No. 2 is, in any event, I really
10 have to see the record in the context of the
11 objections that you're making, and that holds true of
12 the objections that you were making, Mr. Seiver. I
13 denied it for purposes of the hearing here, but you
14 certainly are -- both sides have leave to renew those
15 arguments in proposed findings.

16 And bear in mind that the closer you get
17 to proposed findings, that's the closer that I get to
18 findings, the more familiarity I'm going to have with
19 this record. And by the time my decision comes out,
20 I'm going to have a very good grasp of this record.

21 So that's where I stand on it.

22 I'm denying the motion with leave to renew

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1 in proposed findings, and my ruling would be the same
2 with respect to your objections to Mr. Spain in your
3 trial brief, Mr. Seiver. I'm not asking you that I
4 need that, but you have the right, and I will address
5 it.

6 That's it. It's now 5 to 12, and I'm
7 cutting into your lunch hour. We're back here at 10
8 after 1.

9 Thank you.

10 (Whereupon, at 11:52 a.m., the hearing was
11 recessed for lunch, to reconvene at 1:10 p.m.)

12 JUDGE SIPPEL: We're on the record.

13 Just a short announcement. I think you
14 probably already know this, but courtroom B will be
15 available tomorrow. Whatever was going to happen
16 there tomorrow is not going to happen there tomorrow,
17 so you have it through Thursday.

18 All right. Next witness for the
19 complainants will be Ms. Patricia Kravtin; is that
20 correct?

21 MR. SEIVER: Yes, Your Honor.

22 JUDGE SIPPEL: Okay.

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1 JUDGE SIPPEL: Mr. Seiver, you may
2 proceed, sir.

3 MR. SEIVER: Thank you, Your Honor.

4 PATRICIA KRAVTIN, SWORN

5 DIRECT EXAMINATION

6 BY MR. SEIVER:

7 Q Good afternoon, Ms. Kravtin. Would you
8 please state your name for the record.

9 A Yes. Patricia D. Kravtin.

10 Q And, Ms. Kravtin, are you the same
11 Patricia D. Kravtin that submitted 68 pages of
12 prefiled direct testimony in this proceeding on behalf
13 of the complainants, dated March 31, 2006?

14 A Yes, I am.

15 Q And that's 68 pages of testimony with
16 exhibits attached thereto, your CV, and some other
17 exhibits; is that correct?

18 A Yes, that's correct.

19 Q And, Ms. Kravtin, in your prefiled direct
20 testimony, if I were to ask you the questions as
21 written within the testimony, would your answers today
22 be the same?

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1 A Yes, they would.

2 Q And as we sit here today, do you have any
3 corrections that you would like to make to your
4 prefiled testimony?

5 A No, I do not.

6 MR. SEIVER: I tender the witness for
7 cross-examination.

8 JUDGE SIPPEL: What would be the -- what
9 is the exhibit number?

10 MR. SEIVER: Well, we had not given it a
11 number, Your Honor. Would you like us to number it
12 sequentially with our documentary exhibits?

13 JUDGE SIPPEL: I would -- well, yes,
14 unless you have a better idea.

15 MR. SEIVER: Well, we could call it a
16 lettered exhibit as we did with the -- as the Gulf
17 Power witnesses did. They called their Exhibits A, B,
18 C, and D, as opposed to the numbers.

19 JUDGE SIPPEL: If you want to do that,
20 that's fine.

21 MR. SEIVER: I would designate it then as
22 Exhibit A.

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1 JUDGE SIPPEL: Okay. So this will be
2 Complainants' Exhibit A.

3 MR. SEIVER: Complainant's Exhibit A, yes,
4 Your Honor.

5 JUDGE SIPPEL: For identification.

6 (Complainant's Exhibit A
7 marked for identification.)

8 MR. SEIVER: And I'm sorry, before I
9 tender her for cross, I would like to move that her
10 testimony be admitted into evidence.

11 JUDGE SIPPEL: It's identified and are
12 there other objections? I know you've got a formal
13 objection to it that you filed a motion to in effect
14 disregard the -- well, disregard portions of it that
15 have been designated as calling for legal conclusions.
16 Is that correct?

17 MR. LANGLEY: Actually we had moved to
18 exclude the entirety of it or, in the alternative,
19 limited portions. Subject to our right to renew that
20 motion, we don't have any problem with continuing on
21 with cross that now.

22 JUDGE SIPPEL: That is my ruling. For the

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1 present time, it is denied subject to renewal at
2 proposed findings. Do you understand?

3 MR. LANGLEY: Yes.

4 JUDGE SIPPEL: All right.

5 MR. LANGLEY: Your Honor, consistent with
6 that ruling and with the cross-examination of Mr.
7 Spain, may I correctly assume that I can roll my voir
8 dire into my cross-examination?

9 JUDGE SIPPEL: I'm sorry, you can roll
10 what?

11 MR. SEIVER: His voir dire, which is fine
12 with her. Her qualifications --

13 JUDGE SIPPEL: Oh, sure.

14 MR. SEIVER: -- as being part of the
15 cross.

16 JUDGE SIPPEL: I'm sorry. Yes, we can't
17 speak together. She is being tendered as an expert
18 witness on behalf of the complainants; is that
19 correct?

20 MR. SEIVER: Yes, Your Honor.

21 JUDGE SIPPEL: And you certainly may
22 conduct the appropriate voir dire for purposes of

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